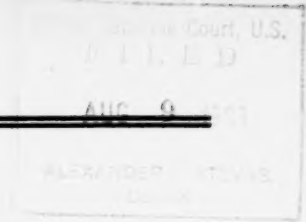


83-210

NO. \_\_\_\_\_



IN THE  
**Supreme Court of the United States**

\_\_\_\_\_  
OCTOBER TERM, 1983  
\_\_\_\_\_

LYNDA IVEY and WILLIAM J. IVEY,  
*Petitioners,*

v.

T. LAMAR FISHER,  
*Respondent.*

\_\_\_\_\_  
PETITION FOR A WRIT OF CERTIORARI  
TO THE  
SUPERIOR COURT OF CHEROKEE COUNTY  
\_\_\_\_\_

CHARLES W. BOYLE  
19 Baltimore Place, N.W.  
Atlanta, Georgia 30308  
404/892-8891

*Attorney for Petitioners*

## QUESTIONS PRESENTED

1. Did the gross errors committed by the Georgia Court of Appeals in denying Petitioners' Application for Appeal amount to a denial of due process afforded Petitioners by the Fourteenth Amendment to the United States Constitution?

2. Whether the Georgia Court of Appeals' denial of Petitioners' Application for Appeal on the issue of whether or not the Respondent was a "farm laborer" within the meaning of the Georgia Workers' Compensation Act amounted to an ex post facto law in violation of Article I, Section 10 of the United States Constitution and a denial of due process in violation of the Fourteenth Amendment to the United States Constitution?

## TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED.....	i
OPINION BELOW.....	2
JURISDICTION .....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS .....	2
STATEMENT OF THE CASE.....	2
REASONS FOR GRANTING WRIT:	
I. The gross errors committed by the Georgia Court of Appeals in denying Petitioners' Appli- cation for Appeal amounted to a denial of due process afforded Petitioners by the Fourteenth Amendment to the United States Constitution . . . .	4
II. The Georgia Court of Appeals' denial of Peti- tioners' Application for Appeal on the issue of whether or not the Respondent was a farm laborer within the meaning of the Workers' Compensation Act amounted to an ex post facto law in violation of Article I, Section 10 of the United States Constitution and a denial of due process in violation of the Fourteenth Amendment to the United States Constitution . . . .	8
CONCLUSION .....	9

## TABLE OF CITATIONS

Page

*Cases*

Oft v. Sims, 142 Ga. App. 9 .....	4,8
Simpkins v. Unigarden Mutual Insurance Company, 130 Ga. App. 535. ....	7
Smyth v. Phoenix, 63 Idaho 585 .....	4
Tect Construction Company, Inc. v. Frymyer, et al., 146 Ga. App. 300 .....	5
U. S. v. Brown, 555 F.2d 407 (5th Cir. 1977); <i>cert. denied</i> 435 U.S. 904 (1978) .....	9

*Constitutional Provisions*

Constitution of the United States:	
Fourteenth Amendment .....	2,8
Article I, Section 10 .....	2,9

*Statutory Provisions*

Official Code of Georgia Annotated § 34-9-2(a) .....	2,3,4,5
Title 28 U.S.C.:	
Section 2101(c) .....	2
Section 1257(3) .....	2

## INDEX TO APPENDIX

Page

APPENDIX A—Superior Court of Cherokee County, Order affirming judgment of full Board of Workers' Compensation . . . . .	A. 1
APPENDIX B—Court of Appeals of Georgia, Order denying Application for Discretionary Appeal. . . . .	A. 4
APPENDIX C—Supreme Court of Georgia, Order dismissing Petition for Writ of Certiorari. . . . .	A. 5
APPENDIX D—Constitutional and Statutory Provisions, Fourteenth Amendment, Article I, Section 10 of the Constitution of the United States, Official Code of Georgia Annotated § 34-9-2(a). . . . .	A. 6
APPENDIX E—Notice of Award of State Board of Workers' Compensation, finding of Administrative Law Judge. . . . .	A. 8
APPENDIX F—Notice of Award of full Board of Workers' Compensation . . . . .	A. 14

NO. \_\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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OCTOBER TERM, 1983

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LYNDA IVEY and WILLIAM J. IVEY,  
*Petitioners,*

v.

T. LAMAR FISHER,  
*Respondent.*

---

PETITION FOR A WRIT OF CERTIORARI  
TO THE  
SUPERIOR COURT OF CHEROKEE COUNTY

---

The Petitioners respectfully pray that a Writ of Certiorari issue to review the opinion and order of the Superior Court of Cherokee County, Blue Ridge Judicial Circuit, signed on December 21, 1982, and entered on December 28, 1982, in the Superior Court of Cherokee County.

## OPINION BELOW

The opinion of the Superior Court for the County of Cherokee affirming the award of the full Board of Workers' Compensation is unreported, but is set forth in Appendix A hereto.

## JURISDICTION

The judgment of the Superior Court of Cherokee County was entered on December 28, 1982. Thereafter, Petitioners filed an Application for Discretionary Appeal with the Georgia Court of Appeals which was denied. Said denial is set forth in Appendix B hereto. Thereafter, Petitioners sought a Petition for a Writ of Certiorari in the Supreme Court of Georgia. The Supreme Court of Georgia dismissed the petition on May 12, 1983. See Appendix C. This petition is timely filed in accordance with 28 U.S.C. § 2101(c). See Rule 20, Rules of the Supreme Court of the United States. This Court's jurisdiction is invoked under Title 28 U.S.C. § 1257(3).

## CONSTITUTIONAL AND STATUTORY PROVISIONS

The pertinent provisions of the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the United States Constitution are set forth in Appendix D hereto. The pertinent provisions of the *Official Code of Ga. Ann.* § 34-9-2(a) is set forth in Appendix D also.

## STATEMENT OF THE CASE

The Respondent, T. Lamar Fisher, contracted with Petitioner, Lynda Ivey, to manage a farm known as Jabar Arabians in September of 1980. He came with a history of back problems, and subsequent to September of 1980, it was necessary for him to not work on various occasions because of his back. It was

requested of the State Board of Workers' Compensation on at least two occasions whether the Petitioner needed workers' compensation insurance for the people that work on the farm owned by Petitioner, Lynda Ivey. Requests to the State Board of Workers' Compensation were responded to in the negative because farm laborers are exempt from the provisions of the Georgia Workers' Compensation Act pursuant to *Official Code of Ga. Ann.* § 34-9-2(a). Despite the information given by the State Board of Workers' Compensation, the Administrative Law Judge held that the Respondent was not a farm laborer within the meaning of the Georgia Workers' Compensation Act, and rejected all of the other arguments advanced by Petitioners. The Administrative Law Judge did find, however, that because the Petitioners were separated (subsequently divorced) that no partnership existed. Upon review by the full Board of Workers' Compensation, the Board concluded that the Administrative Law Judge was correct in her holdings and, in addition, found that a partnership did in fact exist between Petitioners. Opinions of the Administrative Law Judge and the Full Board of Workers' Compensation are appended hereto in Appendices E and F respectively. The Petitioners thereafter appealed the judgment of the full Board of Workers' Compensation to the Superior Court of Cherokee County. The Superior Court of Cherokee County affirmed the award. The Georgia Court of Appeals denied the Application for Appeal and the Supreme Court of Georgia dismissed the Petition for a Writ of Certiorari.



## REASONS FOR GRANTING THE WRIT

## I.

THE GROSS ERRORS COMMITTED BY THE GEORGIA COURT OF APPEALS IN DENYING PETITIONERS' APPLICATION FOR APPEAL AMOUNTED TO A DENIAL OF DUE PROCESS AFFORDED PETITIONERS BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The Petitioners raised three issues with the Georgia Court of Appeals asserting as follows:

The question of whether the Respondent is a farm laborer is worthy of review by certiorari by this Honorable Court because the State of Georgia lacked any precedent on the issue of whether one working on a horse farm was a farm laborer within the meaning of Georgia law. This amounted to a denial of due process to Petitioners.

Black's Law Dictionary defines farm laborer as "agricultural employment and farm labor are used as practically synonymous and include all farm work and work incidental thereto". *Smyth v. Phoenix*, 63 Idaho 585. The question of whether Respondent is a farm laborer within the meaning of the Workers' Compensation Act is a question of first impression in this State. It has never before been decided whether one who works on a horse farm is a farm laborer within the meaning of the act. The case which is controlling, however, is the one of *Oft v. Sims*, 142 Ga. App. 9. Like the Claimant in *Oft v. Sims, id.*, the Respondent in the instant case was allegedly injured while attempting to lift feed. In *Oft v. Sims*, the Georgia Court of Appeals stated that farm laborers were exempt from the provisions of the Workers' Compensation Act. As stated in *Official*

*Code of Ga. Ann.* § 34-9-2(a), "this chapter shall not apply to. . .farm laborers or domestic servants. . . ." Clearly, Fisher was a farm laborer. He lived on the farm, fed the horses, cleaned their stalls, put up fences and did everything that needed to be done around the farm.

The Petitioner, Lynda Ivey, retained the right to see that the Respondent did not treat the horses cruelly, but she had absolutely no control over the time, manner and method in performance of his work. *Tect Construction Company, Inc. v. Frymyer, et al.*, 146 Ga. App. 300. This situation can be analogized to someone hiring a lawyer. The lawyer is an independent contractor, but the client certainly can fire the lawyer if the client is not satisfied with the way the lawyer is handling the case. In this case, Lynda Ivey thought that the Appellee was treating the horses cruelly and, therefore, terminated their contractual relationship. She did not have any control over the time and method of work. She merely required definite results in conformity to the contract. Numerous examples point out that he was an independent contractor. He has control of the checkbook. It was he that chose to deduct social security and self-employment taxes. The following examples of the testimony show by a preponderance of the evidence that the Claimant was an independent contractor. All of the following are noted on pages 24 and 25 of the Trial Transcript.

"Q. Did she tell you what time you had to be to work in the morning?

A. No.

Q. Did she tell you what time you could go at night?

A. No.

Q. Did she tell you how to train a horse?

A. No.

Q. Did she tell you how to feed them?

A. No.

Q. How to worm them?

A. No.

Q. So other than that one prohibition she didn't exercise any control over you?

A. Not very much, no."

On page 27 of the Trial Transcript, we see that the Respondent had the authority to hire and fire any of the other employees.

"Q. Mr. Fisher, can you state whether or not you had authority to fire any of the other employees at Jabar Arabians?

A. Yes, I did.

Q. How about Norris Poole?

A. Yes, I had the authority to fire him, yes."

When questioned by the Court on pages 28, 29 and 30, the following colloquy took place:

"Q. Mr. Fisher, did either Ms. Ivey or Mr. Ivey direct the kind of work that you do and tell you what to do every day?

A. No ma'am.

- Q. Did they check to see you were doing your work like you were supposed to do your work?
- A. Well, I'm not even sure they understood what my function would be really.
- Q. Well, if they didn't like the way you were training a horse, would they tell you that they didn't like it and direct you to do it another way?
- A. No ma'am.
- Q. Had she ever told you how to treat an animal before that time?
- A. No ma'am.
- Q. Did she ever tell you at any other time how to do your job out there?
- A. No, she left that up to me since that was my professional field."

The chief test of whether a person is an employee or an independent contractor lies in whether the alleged employer has or assumes the right to control time and method of work, as distinguished from the right merely to require definite results in conformity to contract. In this case, there is no question that the Respondent is an independent contractor and there is absolutely no evidence to show that he is an employee. *Simpkins v. Unigarden Mutual Insurance Company*, 130 Ga. App. 535.

Prior to coming to Jabar Arabians, Lamar Fisher lived in Evans, Georgia, where he underwent a similar back operation. Respondent's Exhibit 3 in the record points out his complaint

of chronic lower back soreness especially in the year prior to his operation. The report of Dr. Walker says that he underwent ruptured disc surgery at the University Hospital in Augusta, Georgia, by Dr. Nicholas [sic] and then went on to say "the patient had good results, but has had chronic lower back soreness following his surgery, especially this year". The testimony of Norris Poole in the record and the report of the Claimant's own physician, Dr. Exum Walker, clearly show that Appellee did not have an accident arising out of and in the course of employment.

These three errors without precedent in Georgia law amounted to a denial of due process afforded Petitioners by the Fourteenth Amendment to the United States Constitution. A review of the order of the Superior Court affirming the awards of the Administrative Law Judge and full Board of Workers' Compensation clearly shows that the patent errors committed by the Georgia courts amounted to a denial of due process awarded Petitioners.

## II.

THE GEORGIA COURT OF APPEALS' DECIAL OF PETITIONERS' APPLICATION FOR APPEAL ON THE ISSUE OF WHETHER OR NOT THE RESPONDENT WAS A FARM LABORER WITHIN THE MEANING OF THE WORKERS' COMPENSATION ACT AMOUNTED TO AN EX POST FACTO LAW IN VIOLATION OF ARTICLE I, SECTION 10 OF THE UNITED STATES CONSTITUTION AND A DENIAL OF DUE PROCESS IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The search of Georgia law clearly shows that the case of *Oft v. Sims, id.*, stood for the proposition that one working on

a farm was exempt from the provisions of the Workers' Compensation Act. Clearly, the Respondent was a farm laborer. As set forth in the previous reason for granting this Writ of Certiorari, the Respondent fed the horses, cleaned the stalls, put up fences and did everything that needed to be done around the farm. Prior to this case, the Georgia Courts had never held that one working on a horse farm was not exempt from the provisions of the Georgia Workers' Compensation Act. The award granted Respondent, therefore, amounted to an ex post facto law within the meaning of Article I, Section 10 of the Constitution of the United States. The right to be free from ex post facto laws applies to judicial action as well as legislative action. It applies to rights protected against judicial action by the due process clause. An unforeseeable judicial enlargement of a statute, applied retroactively, operates precisely like an ex post facto law which clause 1 of this section forbids. *United States v. Brown*, 555 F.2d 407 (5th Cir. 1977); *cert. denied*, 435 U.S. 904 (1978).

### CONCLUSION

For the foregoing reasons, a Writ of Certiorari should issue to review the opinion and judgment of the Superior Court of Cherokee County.

Respectfully submitted,  
CHARLES W. BOYLE  
19 Baltimore Place, N.W.  
Atlanta, Georgia 30308  
404/892-8891

*Attorney for Petitioners*

OF COUNSEL:  
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Suite 1230  
Encino, California 91436  
213/981-9421

APPENDIX A

IN THE SUPERIOR COURT  
FOR THE COUNTY OF CHEROKEE  
STATE OF GEORGIA

LYNDA IVEY, d/b/a Jabar	*	
Arabians and JABAR	*	
ARABIANS, a partnership	*	
of Lynda Ivey and William	*	
J. Ivey	*	CIVIL ACTION NO. 82-2342
Appellant-Employer	*	
V.	*	Worker's Compensation
T. LAMAR FISHER,	*	Claim No. 250-58-5484
Appellee-Claimant	*	

ORDER

This is an appeal from an award of the State Board of Worker's Compensation. Claimant Fisher was injured while scooping feed for horses stabled at Appellant's training facility for Arabian horses. Claimant, who was subsequently dismissed by Appellant, filed for Worker's Compensation against the above named Appellant-Employers.

The Administrative Law Judge determined that Claimant was an employee, that he was injured during the course of his employment and that he was disabled by this work related injury. The Appellants were determined to have the requisite number of employees to subject them to the Worker's Compensation Act. Further it was determined that the Jabar Arabian operation was a business for training thoroughbred Arabian horses for profit and that Claimant was not a farm laborer. Appellant William J. Ivey was determined by the Administrative Law Judge to have withdrawn from the partnership prior to this claim.

## A. 2

On appeal, the full board adopted the findings and conclusions of the Administrative Law Judge except that the full board found that William J. Ivey had not withdrawn merely by his act of separating from his wife. The board amended the award of Judge Mahan to include the Appellant-husband.

This appeal was then filed in Superior Court.

## CONCLUSION

After considering the record of the administrative hearing and the findings based thereupon, after hearing argument of counsel and review of briefs submitted, pursuant to *Official Code of Georgia Annotated* 34-9-105, the Court finds that Appellant does not urge nor does the Court find that. . . (1) The members acted without or in excess of their powers; (2) The order or decree was procured by fraud; (3) The facts found by the members do not support the order or decree; . . . (5) The order or decree is contrary to law.

Furthermore, after consideration of the transcript, as to the issues urged by Appellant concerning the nature and origin of the injury; the status of the Claimant as an employee or independent contractor; the status of the employer as an exempt agricultural operation vs. non-exempt commerce; and, whether or not the partnership had dissolved, this Court cannot conclude that

"there is not sufficient competent evidence in the record to warrant the members (of the full board) making the order (of July 16, 1982) complained of;"

Therefore pursuant to *O.C.G.A.* 34-9-105(d) this Court is constrained to and does hereby affirm said award.



A. 3

So ORDERED this 21st day of December, 1982.

/s/ Frank C. Mills, III  
Frank C. Mills, III, Judge  
Superior Court of Cherokee Co.  
Blue Ridge Judicial Circuit

A. 4

APPENDIX B

COURT OF APPEALS OF THE STATE OF GEORGIA

ATLANTA, February 8, 1983

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

APPLICATION NO. 605

WILLIAM J. IVEY V. T. LAMAR FISHER

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby denied.

29-3

82-2342

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta      February 8, 1983

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Alton Hawk Clerk.

A. 5

APPENDIX C

CLERK'S OFFICE, SUPREME COURT OF GEORGIA

Atlanta      May 12 1983

Dear Sir:

Case No. 39755. Ivey et al. v. Fisher

The Supreme Court today dismissed the petition for the writ of certiorari in this case.

All the justices concur.

Please see Rule 31.

Very truly yours,

MRS. JOLINE B. WILLIAMS,  
Clerk

APPENDIX D

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. The pertinent provisions of the Fourteenth Amendment are:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

2. The pertinent provisions of Article I, Section 10 of the Constitution of the United States are:

"No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts or grant any Title of Nobility. . . ."

3. The pertinent provisions of the Official Code of Ga. Ann. § 34-9-2(a) are:

"This chapter shall not apply to common carriers by railroad engaged in intrastate trade or commerce, nor shall this chapter be construed to lessen the liability of such common carriers or take away or diminish any right that any employee of such common carrier or, in case of his death, the personal representative of such employee may have under the laws of this state; nor shall this chapter apply to employees whose employment is not in the usual course of trade, business, occupation, or profession of the

A. 7

employer or not incidental thereto; nor to *farm laborers* or domestic servants; nor to employers of such employees; nor to any person, firm, or private corporation, including any public service corporation, that has regularly in service less than three employees in the same business within this state unless such employees and their employers voluntarily elect to be bound.

APPENDIX E

STATE BOARD OF WORKERS' COMPENSATION  
1800 Peachtree Street, N.W.  
ATLANTA, GEORGIA 30367

Notice of Award

CLAIM NO. 250-58-5484  
INJURY DATE 6-7-81

CASE OF T. Lamar Fisher  
DATE March 11, 1982

---

T. Lamar Fisher                      Employee  
c/o Thomas C. Holcomb, Esquire  
1250 Tower Place  
Atlanta, Georgia 30326-2901

William J. Ivey                      Employer  
d/b/a Jabar Arabians, and Lynda  
Ivey, d/b/a Jabar Arabians; and  
Jabar Arabians, a partnership of  
Lynda Ivey and William J. Ivey

William J. Ivey  
Dunwoody Park Apartments  
4048-E Dunwoody Park  
Dunwoody, Georgia 30338

Lynda Ivey  
Route 4, Jones Road  
Alpharetta, Georgia 30201

Thomas C. Holcomb                      Counsel for Claimant  
1250 Tower Place  
Atlanta, Georgia 30326-2901

Charles Boyle  
1409 Peachtree Street, N.E.  
Suite 1005  
Atlanta, Georgia 30307

Counsel for Lynda Ivey

Joe Harmon  
1204 Life of Georgia Tower  
Atlanta, Georgia 30365

Counsel for William J. Ivey

Based on the evidence adduced before me at the hearing and the exhibits, I find in fact:

1. The parties stipulated: Claimant's average weekly wage was \$600 on June 7, 1981. Venue is in Cherokee County. The Board has jurisdiction to decide the issues. Legal notice of an alleged accident on June 7, 1981 was given. Defendants do not have Workers' Compensation coverage.

2. Jabar Arabians was a partnership composed of William J. Ivey and Lynda Ivey since both agreed to share the profits and losses from this enterprise. In January 1981, William J. Ivey left the operation of the business but retained ownership of the real estate, the stables and some of the horses. After January 1981, all of the business losses were borne by Lynda Ivey. The withdrawal of William J. Ivey in January 1981 from the partnership dissolved the partnership. 175 Georgia Reports 33; 64 Appeals 600, 606. Therefore, at the time of the alleged injury of June 7, 1981 the business was an individual proprietorship owned by Lynda Ivey d/b/a Jabar Arabians.

3. Jabar Arabians operates a training facility for Arabian horses which are owned by individual customers. The value of these horses are between \$35,000 and \$50,000 each. The horses are trained for horse show competitions. The horses are transported by the employees of Jabar and are shown in competitions. Jabar employees also trained and worked with horse owners to enable them to show their own horses. The horse owners paid Jabar for these services. No farm crops were grown on the Jabar facilities. Although the defendant contends that Jabar is a farming operation and is exempt from the Workers'

Compensation Act under Code § 114-107, Jabar Arabians is in the business of training thoroughbred Arabian horses for profit and claimant is not a farm laborer but is a horse trainer for this enterprise. Jabar Arabian is therefore subject to the Workers' Compensation Act.

4. Claimant was paid \$600 a week to operate and promote the horse training operation for Jabar. The \$600 a week was paid to the claimant regardless of the number of horses he trained. Lynda Ivey exercised control over the claimant in the training of the horses and finally terminated his employment because claimant told her he was not going to allow her to tell him how to train horses. Therefore, Jabar exercised the right to control the time, method and means of claimant's work. Income tax and social security tax were withheld from the claimant's check. Claimant's employment did not have a definite beginning or ending. Lynda Ivey told claimant not to hit her horses in the face while he was training them. Therefore, claimant was an employee of Jabar and was not an independent contractor.

5. On June 7, 1981, Jabar had four regular employees and was subject to the Workers' Compensation Act. Claimant was the manager who oversaw the whole operation of Jabar, the well being of the horses and their training. He worked the horses and showed them in competition. Claimant advised Lynda Ivey on the purchase of horses for promotional use and investments. On June 7, 1981 claimant injured his lower back while scooping feed for the horses. No panel of physicians was posted and he went to Dr. Exum Walker for treatment. He has been admitted twice to the hospital for surgery of his work related injury. Claimant had to drive to Dr. Exum Walker's office five times on a 80 mile round trip for treatment. In 1979 claimant had a prior back injury but was treated by his doctor and released. After 1979 he was able to perform all of his normal duties of a horse trainer. Claimant had problems with his back after moving from Augusta to Jabar and after doing a hard day's work while working for Jabar. He was terminated from his employment on July 4, 1981 and given four weeks



A. 11

severance pay. Claimant is now self-employed and operates a training stable in Canton, Georgia. He is unable because of his work related injury to have as many horses as he had previously trained. He cannot ride horses as he previously did and has no income from this business because his overhead is higher than his income. However, I find that claimant is only partially economically disabled and not totally economically disabled. When claimant was first hired by the defendant he was operating a horse training business in Augusta, Georgia and was training about 15 horses. The 15 horses were moved to the Jabar facilities and were the first horses there. Customers then began bringing their horses for training to Jabar. Claimant supervised the employees, scooped feed for the horses, has done fence work and the cleaning of stalls. Horses were brought to Jabar for boarding and training. When he left Jabar in July three customers of Jabar left their horses with him. After June 1981, when claimant allegedly was cruel to a horse, only 1 horse then remained at Jabar for training. Claimant now has four horses to train at his stables and receives \$1,000 a month for their board.

He got out of the hospital Friday, July 3, 1981 and his termination letter was received the morning of July 4, 1981.

Claimant had an accident arising out of and in the course of his employment on June 7, 1981 when he injured his lower back scooping feed for the horses.

6. Lynda Ivey called the Board about Workers' Compensation insurance and was informed that none was needed since she was operating a farm. Because she was misinformed by an employee of the Board that workers' compensation was not necessary, she neither wilfully refused nor neglected to obtain workers' compensation insurance. The penalty provision of Code § 114-603 will not be imposed.

7. Claimant has incurred the following reasonable medical expenses in an effort to obtain relief and a cure of his work related injury of June 7, 1981:

# A. 12

Dr. Exum Walker		\$4,735.00
Previously paid		
by claimant	324.00	
Doctors Memorial Hospital		8,053.37
Previously paid		
by claimant	555.00	
Dr. Edmund Brantley		73.00
Professional Anesthesia Services		1,802.00
Dr. James K. VanBuren		135.00
Medication		
Paid by claimant	12.50	
Travel, 5 trips 80 miles each		72.00
400 miles at \$.18 per mile		

8. The defendants had reasonable grounds for defending this claim and attorney fees are not assessed against them.

9. Vocational rehabilitation is not necessary.

## AWARD

WHEREFORE, based on the above and foregoing findings of fact and the conclusions of law applicable thereto, Lynda Ivey, d/b/a Jabar Arabians is directed to pay T. Lamar Fisher the sum of \$80 per week from August 3, 1981 for partial economic disability until altered or terminated by law.

Lynda Ivey, d/b/a Jabar Arabians is directed to pay the reasonable medical expenses set out in paragraph 7 above and reimburse claimant for the amount shown to have been paid by him.

The defendant is further directed to pay all medical expenses and to furnish to or on behalf of the claimant all such medical, surgical, hospital, or other treatment as may be reasonably required to effect a cure or give relief to the claimant's injury-resultant condition which the parties agree are reasonable in amount and reasonably required to effect a cure or give relief

A. 13

subject to hearing on request of any party to resolve any dispute. The provisions of this paragraph are interlocutory in nature.

AND IT IS SO ORDERED, this the 11th day of March 1982.

STATE BOARD OF  
WORKERS' COMPENSATION

/s/  
Effie A. Mahan  
Administrative Law Judge

EAM:jld

APPENDIX F

STATE BOARD OF WORKERS' COMPENSATION  
1000 South Omni International  
Tenth Floor  
ATLANTA, GEORGIA 30335

Notice of Award

CLAIM NO. 250-58-5484	CASE OF T. LAMAR FISHER
INJURY DATE 06/07/81	DATE July 16, 1982

---

T. Lamar Fisher  
c/o Attorney at Law  
Employee  
William J. Ivey and Lynda Ivey  
d/b/a Jabar Arabians, a partnership of  
Lynda Ivey and William J. Ivey  
Employer  
Thomas C. Holcomb  
Counsel for Employee  
Charles Boyle  
Counsel for Lynda Ivey  
Joe Harmon  
Counsel for William J. Ivey

This claim came before the board on May 18, 1982, on application of the employer for review of the award of Judge Mahan, dated March 11, 1982.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon a de novo consideration of all the evidence, the board makes the findings and conclusions of the administrative law judge its findings and conclusions, except the board finds that William Ivey and Lynda Ivey are jointly and severally liable for payment of benefits to the claimant. At the time of the

A. 15

accident, Lynda and William Ivey had separated and were in the process of dividing things up. She ran the operation and was responsible for losses. The partnership had not been dissolved. The fact that the Ivey's were separated at the time of the accident does not dissolve the partnership.

AWARD

Based on the above, the board hereby amends the award of Judge Mahan, dated March 11, 1982, and directs William Ivey and Lynda Ivey, d/b/a Jabar Arabians, to pay the claimant Code § 114-405 benefits, at the weekly rate of \$80.00, effective August 3, 1982, and continuing for a period not to exceed 350 weeks from date of injury.

IT IS SO ORDERED, this the 16th day of July, 1982.

Concurring: Director Don L. Knowles. Director James W. Paris concurs in part. He would adopt the award of the administrative law judge as written.

STATE BOARD OF  
WORKERS' COMPENSATION

/s/ Herbert T. Greenholtz  
Herbert T. Greenholtz, Jr.,  
Chairman

jcs/fma

---